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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

TANIA E. BATACHE,

Plaintiff and Appellant,

v.

ROBERTO AYALA et al.,

Defendants and Respondents.

B210783

(Los Angeles County  
Super. Ct. No. SC076527)

APPEAL from a judgment of the Superior Court of Los Angeles County. John L. Segal, Judge. Affirmed.

Leonard Chaitin for Plaintiff and Appellant.

West & Miyamoto and Eugene F. West for Defendants and Respondents.

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A jury returned a defense verdict in Tania E. Batache's personal injury action -- stemming from a car accident -- against Roberto Ayala and Sehmi Motors, Inc. On appeal, appellant contends the trial court erred by failing to *sua sponte* instruct the jury on the substance of Vehicle Code section 22107.<sup>1</sup> We affirm the judgment.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On an afternoon in April 2002, respondent Ayala was driving east on Santa Monica Boulevard in Los Angeles. Ayala was employed by Sehmi Motors, Inc., an automotive repair shop. He was driving a customer's car to assess an overheating problem. As Ayala approached the intersection of Santa Monica and Sawtelle Boulevards he noticed traffic was stopped in the lane closest to the center of the road and the neighboring lane. Ayala moved into the lane closest to the curb. He entered the intersection from the curb lane on a green light. Simultaneously, appellant was making a left turn from westbound Santa Monica Boulevard onto Sawtelle Boulevard. The cars collided. Appellant told a police officer she had turned on a green light, but later asserted she had a green left turn arrow and was making a protected left turn at the time of the collision.

At trial, appellant argued Ayala was negligent in that he was not paying attention, he was "curb sneaking," i.e., using the curb lane to pass stopped traffic in the other two lanes, and was driving too fast for the conditions. Appellant contended she was making a protected left turn, and even if she turned on a circular green light rather than a green arrow, Ayala was still at least partially at fault. The jury found Ayala was not negligent and returned a defense verdict.

Appellant subsequently filed a motion for new trial in which she argued there was insufficient evidence to support the verdict. The trial court denied the motion. This appeal followed.

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<sup>1</sup> All further statutory references are to the Vehicle Code.

## DISCUSSION

The sole issue on appeal is whether the trial court erred in failing to *sua sponte* instruct the jury on section 22107. We find no error.

The trial court instructed the jury on several general negligence principles, as well as sections 21453, subdivision (a) (steady circular red signal) and 21801, subdivision (a) (left turn right of way). Appellant did not request an instruction on section 22107.<sup>2</sup>

Appellant concedes that as a general matter, the trial court has no duty to *sua sponte* instruct the jury in civil cases. This principle is neither new nor controversial. Recently, in *Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1130-1131 (*Metcalf*), our high court re-stated the general rule:

“ “ “ ‘In a civil case, each of the parties must propose complete and comprehensive instructions in accordance with his theory of the litigation; if the parties do not do so, the court has no duty to instruct on its own motion.’ [Citations.]” [Citation.] Neither a trial court nor a reviewing court in a civil action is obligated to seek out theories plaintiff might have advanced, or to articulate for him that which he has left unspoken.’ [Citation.]” (*Metcalf, supra*, at pp. 1130-1131.)

Nonetheless, appellant argues that the trial court erred in failing to instruct on section 22107, relying on the rule that the trial court has a duty to instruct on the controlling legal principle at issue in a civil case. (*Lysick v. Walcom* (1968) 258 Cal.App.2d 136, 157 [in dicta]; *Roberts v. City of Los Angeles* (1980) 109 Cal.App.3d 625, 632 (*Roberts*).) This exception to the general rule is relevant only where there is a “ ‘complete failure to instruct on material issues and controlling legal principles which may amount to reversible error. [Citations.]’ [Citation.]” (*Scofield v. Critical Air Medicine, Inc.* (1996) 45 Cal.App.4th 990, 1010, italics omitted.) The duty to instruct on controlling legal principles does not require the trial court to instruct on specific legal or factual theories a party did not advance. (*Metcalf, supra*, 42 Cal.4th at pp. 1130-1131.)

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<sup>2</sup> Section 22107 states: “No person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal in the manner provided in this chapter in the event any other vehicle may be affected by the movement.”

Nor does it compel the trial court to “ ‘act as a sort of advisory or “backup” counsel, with all the frustration of the employed attorneys’ trial strategy and tactics which such a holding could encompass.’ ” (*Roberts, supra*, 109 Cal.App.3d at p. 635.)

Here, the trial court instructed the jury on the controlling legal principles in this case: the elements of negligence. The trial court also gave instructions on specific Vehicle Code sections, at the parties’ request. Even if the facts supported a theory that Ayala violated section 22107, the trial court had no duty to independently tease it out and instruct the jury on the theory, absent a request from appellant.

Further, appellant offered no evidence at trial to support the theory that Ayala violated section 22107. Section 22107 forbids a motorist from turning from a direct course until the turn can be made safely and requires the motorist to first signal. Section 22107 also forbids a motorist from moving right or left until the move can be made safely and indicates a signal is required. However, the evidence at trial was that Ayala changed lanes, entered the intersection, and collided with appellant’s car. Ayala was not turning when the accident occurred. No evidence was solicited or introduced regarding whether Ayala signaled before changing lanes. Moreover, appellant never argued that Ayala’s *lane change* demonstrated negligence. Instead, Appellant argued Ayala was negligent in his direct course, which led him into the intersection.

Section 22107 was not a controlling legal principle in this case. Thus, the trial court had no *sua sponte* duty to instruct on the statute. Appellant forfeited the right to argue on appeal that the jury should have been instructed on section 22107 because he did not request the instruction. (*Metcalf, supra*, 42 Cal.4th at p. 1130; *Wilden v. Washington Nat. Ins. Co.* (1976) 18 Cal.3d 631, 636.)

**DISPOSITION**

The judgment is affirmed. Respondents are to recover their costs on appeal.

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BIGELOW, J.

We concur:

RUBIN, Acting P. J.

MOHR, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.